

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 62791-1-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
JEROME STEVEN TALLEY,)	
)	
Appellant.)	FILED: March 8, 2010
)	

Appelwick, J. — Talley appeals his conviction for second degree burglary, arguing the information was defective for failing to allege the essential element of the ownership or occupancy of the building. Ownership or occupancy of the building is not an essential element of the crime. The information gave Talley sufficient notice so as to prepare his defense. We affirm.

FACTS

Early in the morning on October 29, 2007, Frank Graves entered his garage to drive to work. The garage is not connected to the house. He opened the garage door to the alley and turned on the light. He immediately noticed the passenger door to his car was open. A man was passed out in the front

passenger seat, with one foot hanging out of the door. Graves went back into his house and called the police.

Officer Michael Larned responded and observed Jerome Talley sleeping in the car and a used needle on the car floor between Talley's feet. Officer Larned woke Talley up, walked him out to the patrol car, and frisked him for weapons. After placing him under arrest for trespass, Officer Larned searched Talley incident to arrest and discovered an iPod and sunglasses in Talley's jacket pocket. Talley said the items were not his and must have belonged to the car's owner. The officer then informed Talley he was under arrest for burglary. At trial, Talley testified that he was a heroin addict, and that he did not remember entering the garage or putting the items in his pocket.

A jury found Talley guilty of second degree burglary, and the court imposed a standard range sentence. Talley timely appealed.

DISCUSSION

Talley asserts that the information was insufficient, because it failed to allege either ownership or occupancy of the building. Charging documents must include all of the essential statutory and nonstatutory elements of a crime. State v. Goodman, 150 Wn.2d 774, 784, 83 P.3d 410 (2004); U.S. Const. amend. VI; Wash. Const. art. I, § 22. The purpose of the requirement is to give notice to the accused of the nature of the crime in order to prepare a defense. State v. Tandecki, 153 Wn.2d 842, 846, 109 P.3d 398 (2005) (citing State v. Kjorsvik, 117 Wn.2d 93, 101, 812 P.2d 86 (1991)).

A challenge to the constitutional sufficiency of a charging document may be raised initially on appeal, as Talley does here. Kjorsvik, 117 Wn.2d at 102. Where the issue is raised for the first time on appeal, the charging document is construed liberally in favor of validity. Tandecki, 153 Wn.2d at 848–49. The information is sufficient if (1) the necessary facts appear in any form, or by fair construction can be found, in the charging document; and (2) the defendant cannot show actual prejudice from lack of notice. Id. (quoting Kjorsvik, 117 Wn.2d at 106–06).

The second degree burglary statute under which Talley was charged provides: “A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle or a dwelling.” RCW 9A.52.030(1). A person “enters or remains unlawfully” when that person is “in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.” RCW 9A.52.010(3). The information mirrored this language, alleging that Talley “did enter and remain unlawfully in a building, located at 4180 42nd Avenue NE, Seattle . . . with intent to commit a crime against a person or property therein.”

Talley argues that under State v. Klein, 195 Wash. 338, 80 P.2d 825 (1938), occupancy is an essential element of burglary. Klein held that an information that failed to allege ownership, but named the building’s occupant, was sufficient to charge burglary under the criminal code at that time. Id. at 344.

Klein and other cases have held that ownership is not an essential element of burglary, and is only material for two purposes: “[t]o show on the record that the building burglarized is not the property of the accused, and . . . to identify the offense to such an extent as to protect the accused from a second prosecution for the same offense.” Id. at 343–44 (quoting State v. Knzek, 92 Wash. 351, 355, 73 P.2d 731 (1937)).

Under the current statute, unlawfully entering or remaining in a building is an essential element of burglary. RCW 9A.52.030(1). While ownership or occupancy may be necessary to prove that entry was unlawful, neither is an essential element of the crime. The information here properly stated all essential elements. The information sufficiently apprised Talley of the building he was accused of unlawfully entering.

Further, Talley does not argue and cannot show the information’s failure to allege ownership or occupancy caused any actual prejudice. The “prejudice” prong of the analysis looks beyond the face of the charging document to determine whether the accused actually received notice of the charges. Kjorsvik, 117 Wn.2d at 106. The information contained the address of Graves’s house. The garage behind the house is the same garage in which Graves found Talley, and is the building Talley was charged with entering. There is no question that Talley actually received notice of the charges. In this instance, the information passes muster.¹ We affirm.

¹ Talley alleges in his statement of additional grounds for review that the court erred by failing to instruct the jury on the statutory definition of “enter,” RCW 9A.52.010(2) (“The word ‘enter’ when

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WE CONCUR:

Schindler, CT

Cox, J.

constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property.”). To satisfy the constitutional requirement of a fair trial, the jury instructions, when read as a whole, must correctly tell the jury of the applicable law and permit the defendant to present his theory of the case. State v. Mills, 154 Wn.2d 1, 7, 109 P.3d 415 (2005). While the “constitution . . . requires the jury be instructed as to each element of the offense charged . . . [,] the failure of the trial court to further define one of those elements is not within the ambit of the constitutional rule.” State v. Fowler, 114 Wn.2d 59, 69–70, 785 P.2d 808 (1990) (citing State v. Scott, 110 Wn.2d 682, 689, 757 P.2d 492 (1988)). Here, the jury instructions instructed the jury as to each element of the offense charged, including the definition of “enter unlawfully.” While the criminal code defines “enter,” it is a further definition of the element to “enter unlawfully.” The jury instructions were proper.

Talley also argues there was insufficient evidence to support the jury’s finding that Talley entered the garage. A reviewing court must affirm a conviction if after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). While Talley testified that he did not remember entering the garage, both Officer Larned and Graves testified they saw him passed out in Graves’s garage. Absent any evidence that someone else placed Talley in the garage, the only reasonable inference to draw from this evidence is that Talley entered the garage himself.